

October 9, 2002

Mr. Mazin Enwiya
Remedial Project Manager
Thomas J. Krueger, Esq.
Associate Regional Counsel
U. S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd., 6th FL
Chicago, IL 60604

Re: Suburban Self Storage
2333 Wisconsin Avenue
Downers Grove, Illinois
DuPage County
Ellsworth Business Industrial Park

Dear Messrs. Enwiya and Krueger:

As a result of completing Phase I and Phase II studies, the U.S. Environmental Protection Agency, Region V (EPA), has determined that certain sections of Ellsworth Business Industrial Park have been contaminated with chlorinated solvents. As a result, in August 2002, the EPA issued a General Notice Letter to current owners of property in the vicinity of Ellsworth Business Industrial Park (and others), including Suburban Moving and Storage Company (hereinafter the "property owner"),¹ the owner of property at 2333 Wisconsin Avenue ("subject property"). In so doing, the EPA has included Suburban Moving and Storage Company among the Potentially Responsible Parties ("PRPs") that could be held liable for the costs associated with clean up of the Ellsworth Business Industrial Park as provided for under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or "Superfund"), as amended, 42 U.S.C. § 9601, et seq.

By this letter Suburban Moving and Storage Company responds to EPA's General Notice Letter and requests that EPA remove it from the list of PRPs for the Ellsworth Business Industrial Park site. This request is supported by the following information:

¹ Suburban Self Storage is a business operated by Suburban Moving and Storage Company on the subject property.



- The property owner has never kept any hazardous or toxic waste materials on the subject property.
- The property owner has directed research and analysis which concludes that the materials of concern, chlorinated solvents, are not present on, have not been used on, and did not emanate from the subject property.
- To extent that the subject property was used by prior owners for the use, storage, or disposal of any hazardous or toxic waste materials, the site was characterized and those materials were removed from the site prior to 1988. Subsequent site surveys have been conducted that support this determination, which have been documented in a report previously provided to the EPA.
- To the property owner's knowledge, the subject property has never been the site of any "clean-up" of the property pursuant to CERCLA which could give rise to owner liability to reimburse any governmental authority for the costs of clean-up for the chemicals of concern – chlorinated solvents.
- The property owner has no relationship with the person or persons responsible for chlorinated solvent-related contamination.

For the forgoing reasons, Suburban Moving and Storage Company does not qualify as a PRP, as the property owner is not a "covered person" as defined in 42 U.S.C. § 9607. Since Suburban Moving and Storage Company does not qualify as a PRP, Suburban Moving and Storage Company requests that its name be stricken from the list of PRPs for the Ellsworth Business Industrial Park site. Further information supporting this request follows.

The Property Owner Has Never Stored, Used, or Disposed of Materials on the Subject Property that Could Result in CERCLA Liability

The property owner has owned and operated the subject property since 1988. For the entire period of its ownership, the subject property has been used as a self-storage facility, where Suburban Moving and Storage Company operates Suburban Self Storage, which leases individual small storage lockers to its customers and leases a large warehouse space to American Telephone and Telegraph Company ("AT&T"). Neither Suburban Self Storage nor AT&T conduct any manufacturing operations on the subject property or generate any waste containing hazardous or toxic waste materials. The only waste generated on the subject property is non-hazardous municipal trash.

Seller's Affidavit and Historical Property Use Support Conclusion that Subject Property Use of Did Not Include the Substances Resulting in the Potential CERCLA Liability

As part of the documentation received when it purchased the subject property, the property owner and its lender received an affidavit from the seller, MagneTek, Incorporated ("MagneTek"), which provides (in part) the following assurances:²

4. That there are no violations of municipal, county, state or federal laws, ordinances, codes, or regulations including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 (*sic.*), et seq., as amended ("CERCLA") (*sic.*) pertaining to the Property or in the use or occupancy thereof.

5. That to the best of Affiant's knowledge, there are no toxic contaminants located in, on or about the Property

6. That to the best of Affiant has not received any notice of violations of any municipal, county, state or federal laws, ordinances, codes and regulations including but not limited to CERCLA. Further, Affiant does not have any knowledge of any actions, suits or proceedings pending or threatened by any court, regulatory or governmental agency, or public board or body against or affecting the Property.

Thus, the property owners received reasonable assurance regarding the condition and use of the subject property prior to purchasing it. No matter what waste materials or chemicals may have been on the subject property, Suburban Moving and Storage Company has no reason to believe that it purchased property that is in violation of CERCLA.

Nevertheless, to ensure that the subject property is not a source of chlorinated solvent contamination in the Ellsworth Industrial Park the property owner has collected, compiled and reviewed public records and operational information regarding the prior use of the subject property.³ Public records show that, from approximately 1960 to 1986, the subject property was owned or operated by Liberty Copper and Wire Company ("Liberty"). Liberty manufactured copper wire. Its operations included enamel coating and electroplating using solvents, plating bath solutions and coatings, which were generally stored in steel drums. From 1960 until 1984, Liberty was a subsidiary of

² CERCLA Affidavit, Attachment A to Report by Schrack Environmental Consulting, Inc., dated October 8, 2002.

³ As a result of a Freedom of Information Act request, we have assembled a site history based on public records. Please contact me if you need a copy of this information.

Litton Industries.⁴ In 1984 Litton Industries sold all of Liberty's assets to MagneTek, the entity that sold the subject property to Suburban Moving and Storage Company in 1988. In 1986, however, MagneTek ceased Liberty's manufacturing operations on the subject property. Thus, Suburban Moving and Storage Company acquired an idle property in 1988.

In 1993, PRC Environmental Management, Incorporated (PRC) completed a report documenting its preliminary assessments and visual site inspections of the subject property as part of a program to identify and characterize Resource Conservation and Recovery Act ("RCRA")⁵ facilities that have a high priority for corrective action.⁶ According to PRC, prioritization was focused on the actual or potential releases to the environment from the former solid waste management units ("FSWMUs") and areas of concern ("AOCs"). This investigation followed up on Liberty's Notification of Hazardous Waste Activity form ("Notification"), which it submitted in 1980, and its documentation of a xylene spill, that occurred in 1987. In its Notification, Liberty acknowledged that it was generating and storing a number of hazardous wastes, and it identified each of the waste chemicals by waste code. PRC's report noted that each of the waste storage areas had ceased operations when Liberty ceased operations. Significantly, none of the chemicals identified as being used on the subject property by Liberty contain chlorinated solvents. Moreover, PRC's report did not identify any AOCs or evidence of any unremediated chemical spills on the subject property.

Sampling Performed to Date Demonstrates that the Chlorinated Solvents Contamination is on Property Adjacent to the Subject Property, Not the Subject Property

According to EPA sample data made available to us, the closest property that has been shown to be contaminated with chlorinated solvents, which gives rise to potential CERCLA liability, is adjacent to the subject property. Our understanding is that contamination is appearing in a low point drain in a public right-of-way adjacent to but not on any property owned by Suburban Moving and Storage Company. Thus, the subject property has not been shown to be contaminated by chlorinated solvents.

⁴ It is our understanding that EPA has identified Litton Systems/Northrup Grumman Corporation to be the survivor in interest of Liberty.

⁵ 42 U.S.C. § 6901, *et seq.*

⁶ Documented in Preliminary Assessment/Visual Site Inspection Suburban Self Storage Facility (Formerly Liberty Copper and Wire Company Facility), Downers Grove, Illinois, ILD 047 033 188, prepared March 2, 1993 (*hereinafter*, "PRC's report"), Attachment B to Report by Schrack Environmental Consulting, Inc., dated October 8, 2002.

Reported Contamination of Adjacent Property Was Caused By Acts of Third Parties with No Contractual Relationship with Property Owner

Suburban Moving and Storage Company has no current or past contractual relationship with any of the owners of property adjacent to the subject property. Suburban Moving and Storage Company is only in privity of contract with MagneTek, the company from which Suburban Moving and Storage Company purchased the subject property.

Conclusion

Suburban Moving and Storage Company is not and never has been in the business of using, storing or disposing of chlorinated solvents. Suburban Moving and Storage Company never used chlorinated solvents on the subject property. At the time it purchased the subject property, Suburban Self Storage received an affidavit from the seller stating that the property is in compliance with environmental regulations including CERCLA. Sampling has not shown the subject property to be contaminated with chlorinated solvents. The historical use of the property never involved chlorinated solvents. Suburban Moving and Storage Company does not have a contractual relationship with the persons or companies responsible for the non-compliance with CERCLA in the Ellsworth Business Industrial Park. As a result, Suburban Moving and Storage Company does not qualify as a PRP with respect to the Ellsworth Business Industrial Park site, as the property owner is not a "covered person" as defined in 42 U.S.C. § 9607. Accordingly, we respectfully request that you take action to remove Suburban Moving and Storage Company (and Suburban Self Storage) from any lists of PRPs for the Ellsworth Industrial Park.

Any future correspondence with respect to past use of chemicals on the subject property should be directed to the survivor in interest of Liberty. Please contact us if you need any additional information regarding our use of the subject property.

Sincerely,



Robert K. Temple

Attachment: Report by Schrack Environmental Consulting, Inc., dated October 8, 2002.

RKT:rw